IN THE

Supreme Court of the United States

October Term, 1957.

No. 117.

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE and PAULA BROWNING DENCKLA,
Petitioners,

v.

ELIZABETH DONNER HANSON, as Executrix and Trustee Under the Last Will of Dora Browning Donner, Deceased, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Delaware.

BRIEF OF RESPONDENT EDWIN D. STEEL, JR., GUARDIAN AD LITEM FOR JOSEPH DONNER WINSOR, DONNER HANSON AND CURTIN WINSOR, JR.

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SUBJECT INDEX.

Page

QUESTIONS PRESENTED 2

STATEMENT OF THE CASE 3

Donner Family Relationships 3

Parties Interested in Invalidating the 1935 Trust and Appointments 4

Parties Interested in Sustaining the 1935 Trust and Appointments 4

SUMMARY OF ARGUMENT 6

ARGUMENT 8

A. The Full Faith and Credit Clause of the Constitution Did Not Require Delaware to Hold Upon the Basis of the Florida Judgment That the 1935 Trust and Appointments Were Invalid 8

1. Delaware Was Not Bound by the Florida Judgment Since Florida Lacked Jurisdiction to Render the Judgment 8

(a) Curtin Winsor, Jr., Who Was Not a Party to the Florida Action or Represented by Others Who Were, Was Not Barred by the Florida Judgment From Litigating in Delaware the Question of Florida's Jurisdiction or the Substantive Validity of Its Decision When He Had a Remainder Interest Under Two Trusts to Which $400,000.00 Was Appointed 8

Curtin Had a Substantial Remainder Interest Under Trusts Nos. 9022 and 9023 8

SUBJECT INDEX (Continued).

Page

Curtin Was Not Represented by His Mother Who Was Guardian Ad Litem for Joseph and Donner 10

Curtin Was Not Represented in Florida as a Member of a Class 11

Curtin Was Not Bound by the Florida Judgment Under the Doctrine of Virtual Representation 11

Mrs. Hanson, Whom Petitioners Claim Represented Curtin in the Florida Action, Had Financial Interests and Legal Duties Adverse to Curtin 12

(b) Florida Lacked Jurisdiction Over the Persons and Property of Indispensable Parties, viz., Wilmington Trust Company, Trustee Under the 1935 Trust, Appointees Thereunder, and Curtin 13

Florida Lacked Jurisdiction Over Wilmington Trust Company, Trustee Under the 1935 Trust, the Appointees Thereunder and Curtin 14

The Wilmington Trust Company, Trustee, the Appointees, Including Delaware Trust Company, Trustee, and Curtin Were Indispensable Parties to the Florida Litigation 19

In the Absence of Indispensable Parties, Florida Had No Jurisdiction to Render a Judgment Which Was Binding Upon Anyone in Delaware 23

SUBJECT INDEX (Continued).

Page

2. Assuming *Arguendo* That Florida Had Jurisdiction to Render the Judgment, Delaware Was Not Bound by It 26

(a) Florida's Jurisdiction (if any) to Render the Judgment Was Only Incidental to the Administration of the Estate of a Florida Decedent 26

(b) The Florida Judgment Was Lacking in Due Process and Was in Derogation of the Full Faith and Credit Clause in That by an Arbitrary Application of Florida Law Florida Destroyed Rights Validly Established Under Delaware Law by a Trust Created and Administered in Delaware Which Had No Significant Relationship to Florida 28

B. The Validity Under Delaware Law of the 1935 Trust and Appointments Is Not Subject to Review by This Court 32

CONCLUSION 33

CASES.

Page

Aetna Life Insurance Co. v. Dunken, 266 U. S. 389 (1924) 30
Armstrong v. Armstrong, et al., 350 U. S. 568 (1955) 15
Atkinson v. Los Angeles Superior Court, 26 U. S. Law Week 2255 (Nov. 5, 1957) 15
Baker v. Baker, Eccles & Company, 242 U. S. 394 (1917) .. 16
Bank of California Nat. Ass'n, et al. v. Superior Court, 16 Cal. 2d 516, 106 P. 2d 879 (1940) 24, 25
Barney v. Baltimore City, 6 Wall. (U. S.) 280 (1867) 23
Black v. Cutter Laboratories, 351 U. S. 292 (1956) 33
Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673 (1930) 32, 33
Burns Mortgage Co. v. Fried, 292 U. S. 487 (1934) 12
Chambers v. Preston, 137 Tenn. 324, 193 S. W. 109 (1917) 11
Chapman v. Texas Co., 80 F. Supp. 15 (E. D. Ill. 1948) 10
Chinnis v. Cobb, et al., 210 N. C. 104, 185 S. E. 638 (1936) .. 21
Demorest v. City Bank Farmers Trust Co., 321 U. S. 36 (1944) 18
Ernest v. Fleissner, 38 F. Supp. 326 (E. D. Wis. 1941) 23
Estin v. Estin, 334 U. S. 541 (1948) 25, 32, 33
Everett v. Everett, 215 U. S. 203 (1909) 33
Fineman v. Cutler, 273 Pa. 189, 116 A. 819 (1922) 23
Florida Land Rock Phosphate Co. v. Anderson, 50 Fla. 501, 39 So. 392 (1905) 23, 24
Griffin v. Griffin, 327 U. S. 220 (1946) rehearing denied, 328 U. S. 876 (1946) 13
John Hancock Mutual Life Insurance Co. v. Yates, 299 U. S. 178 (1936) 32
Hansberry v. Lee, 311 U. S. 32 (1940) 11
Hartford Accident & Indemnity Co. et al. v. Delta & Pineland Co., 292 U. S. 143 (1934) 29, 30
Hartley v. Langkamp, et al., 243 Pa. 550, 90 Atl. 402 (1914) .. 23, 24
Harvey, et al. v. Fiduciary Trust Co., et al., 299 Mass. 457, 13 N. E. 2d 299 (1938) 21
Henderson v. Usher, 118 Fla. 688, 160 So. 9 (1935) 16, 30
Home Insurance Co. v. Dick, 281 U. S. 397 (1930) 30

CASES (Continued).

	Page
Hymans v. Old Dominion Co., 204 Fed. 681 (D. Me. 1913)	23
International Shoe Co. v. Washington, 326 U. S. 310 (1945)	15
Kirby Lumber Corp. v. Southern Lumber Co., 145 Tex. 151, 196 S. W. 2d 387 (1946)	10
Krueding v. Chicago Dock & Canal Co., 285 Ill. 79, 120 N. E. 478 (1918)	24
Kryger v. Wilson, 242 U. S. 171 (1916)	33
Magnolia Petroleum Co. v. Hunt, 320 U. S. 430 (1943)	27
Martinez v. Balbin, — Fla. —, 76 So. 2d 488 (1954)	23, 24
Massachusetts Farmers Defense Committee v. United States, 26 F. Supp. 941 (D. Mass. 1939)	24
McGee v. International Life Insurance Company, 26 U. S. Law Week 4073 (Dec. 16, 1957)	15
Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306 (1950)	15, 31
Nodine v. Greenfield, 7 Paige (N. Y.) 544, 34 Am. Dec. 363 (1839)	10
O'Hara v. McConnell, et al., 93 U. S. 150 (1876)	21
O'Hara, et al. v. Pittston Co., 186 Va. 325, 42 S. E. 2d 269 (1947)	11
Old Wayne Mutual Life Ass'n. v. McDonough, 204 U. S. 8 (1907)	13
Overby v. Gordon, 177 U. S. 214 (1900)	17
Pennoyer v. Neff, 95 U. S. 714 (1878)	13, 15
Pierce v. Ford Motor Co., 190 F. 2d 910 (4th Cir. 1951); cert. denied 342 U. S. 887 (1951)	12
Pink v. A. A. A. Highway Express, Inc., 314 U. S. 201 (1941)	32
Powell v. Shepard, 381 Pa. 405, 113 A. 2d 261 (1955)	24
Quong Ham Wah Co. v. Industrial Comm., 255 U. S. 445 (1921)	33
Riley, Executors v. New York Trust Co., Administrator, 315 U. S. 343 (1942)	12, 17, 27, 28
Riverside Mills v. Menefee, 237 U. S. 189 (1915)	13
Shields v. Barrow, 17 How. (U. S.) 130 (1854)	22, 23

CASES (Continued).

	Page
Skaneateles Water Co. v. Skaneateles, 184 U. S. 354 (1902)	33
Smith v. Adsit, 23 Wall. (U. S.) 368 (1874)	33
Stovall v. Mayhew, 162 Ky. 283, 172 S. W. 500 (1915)	10
Thompson v. Thompson, 226 U. S. 551 (1913)	25
Thompson v. Whitman, 18 Wall. (U. S.) 157 (1873)	25
Thorman v. Frame, 176 U. S. 350 (1900)	25
Transcontinental & Western Air Inc. v. Farley, et al., 71 F. 2d 288 (2d Cir. 1934)	23
Trueman Fertilizer Co. v. Allison, — Fla. —, 81 So. 2d 734 (1955)	21, 22
United States v. Silliman, 167 F. 2d 607 (3d Cir. 1948)	28
Vanderbilt v. Vanderbilt, 25 U. S. Law Week 4563 (June 24, 1957)	15
Viking Press, Inc. v. Goldman, 38 F. Supp. 1014 (S. D. N. Y. 1941)	23
Watts v. Watts, 151 Kan. 125, 98 P. 2d 125 (1940)	21
Wetmore v. Karrick, 205 U. S. 141 (1907)	13
Weymouth v. Delaware Trust Co., 29 Del. Ch. 1, 45 A. 2d 427 (1946)	21
Williamson v. Jones, 43 W. Va. 562, 27 S. E. 411 (1897)	10
Wilson v. Russ, 17 Fla. 691 (1880)	21, 22
Winn v. Strickland, 34 Fla. 610, 16 So. 606 (1894)	21
Yazoo & M. V. R. R. Co. v. Mullins, 249 U. S. 531 (1919)	32

TEXT BOOKS.

	Page
33 Am. Jur., "Life Estates, Remainders, etc." § 180, p. 648	11
34 C. J., "Judgments," § 1435, p. 1013	10
Gray, Rule Against Perpetuities (4th Ed.), § 112(3), § 112.1	9, 10
48 Harv. L. Rev. 995 (1935)	25
Jackson, "Full Faith and Credit—The Lawyer's Clause of the Constitution," 45 Col. L. Rev. 1, 26-34 (1945)	32
3 Paige on Wills (Lifetime Ed.), § 1264, p. 706	10
Restatement, Conflict of Laws, § 299	31
Restatement, Judgments, § 68, Comment "v"	28
Restatement, Judgments, § 71	26
Restatement, Judgments, § 89, Comment "m", p. 443	10
2 Restatement, Property, § 157(c)	10
Scott, "Collateral Estoppel by Judgment", 56 Harv. L. Rev., 1, 18 (1942)	26
2 Scott on Trusts, § 138	21

STATUTES AND RULES.

	Page
§ 365, Title 10, Del. C. 1953	27
Florida Equity Rule 14, now Florida Rule of Civil Procedure 3.6 (31 Fla. Stats. Ann. 168)	11
28 U. S. C., § 1257(3)	32

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No. 117.

DORA STEWART LEWIS, MARY WASHINGTON STEWART BORIE AND PAULA BROWNING DENCKLA,

Petitioners,

v.

ELIZABETH DONNER HANSON, AS EXECUTRIX AND TRUSTEE UNDER THE LAST WILL OF DORA BROWNING DONNER, DECEASED, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE.

BRIEF OF RESPONDENT, EDWIN D. STEEL, JR., GUARDIAN AD LITEM FOR JOSEPH DONNER WINSOR, DONNER HANSON AND CURTIN WINSOR, JR.

QUESTIONS PRESENTED.

A. Did The Full Faith and Credit Clause of the Constitution Require Delaware to Hold Upon the Basis of the Florida Judgment That the 1935 Trust and Appointments Were Invalid?

1. Was Delaware bound by the Florida judgment when Florida lacked jurisdiction to render the judgment?

(a) Was Curtin Winsor, Jr., who was not a party to the Florida action or represented by others who were, barred by the Florida judgment from litigating in Delaware the question of Florida's jurisdiction or the substantive validity of its decision when he had a remainder interest under two trusts to which $400,000.00 was appointed?

(b) Did Florida lack jurisdiction over the persons and the property of indispensable parties, viz., Wilmington Trust Company, trustee under the 1935 trust, the appointees thereunder, and Curtin Winsor, Jr.?

2. Assuming *arguendo* that Florida had jurisdiction to render the judgment, was Delaware bound by it?

(a) Was Florida's jurisdiction (if any) to render the judgment only incidental to the administration of the estate of a Florida decedent?

(b) Was the Florida judgment lacking in due process and in derogation of the full faith and credit clause in that by an arbitrary application of Florida law Florida destroyed rights validly established under Delaware law by a trust created and administered in Delaware which had no significant relationship to Florida?

B. Is the Validity Under Delaware Law of the 1935 Trust and Appointments Subject to Review by This Court?

STATEMENT OF THE CASE.

This brief is filed on behalf of one of the respondents, Edwin D. Steel, Jr., the guardian *ad litem* appointed by the Court of Chancery of Delaware for three infants, Curtin Winsor, Jr.,[1] Joseph Donner Winsor, and Donner Hanson (hereinafter "Curtin", "Joseph" and "Donner"), who were aged 14, 12 and 5, respectively, when the Florida action began (A. 314, R. 2).[2]

The Donner family relationships, their interests under the 1935 trust and appointments and under Mrs. William H. (Dora Browning) Donner's will, are as follows:

Donner Family Relationships.

Mrs. Donner, the Florida decedent and settlor of the 1935 *inter vivos* trust, was married twice. Her first husband was J. Norwood Rodgers. By this first marriage Mrs. Donner had two children, Katherine N. Rodgers (Denckla) and Dorothy B. Rodgers (Stewart). Katherine Denckla had two children, William Donner Denckla and Paula Browning Denckla. Dorothy Stewart had two children, Dora Stewart (Lewis) and Mary Washington Stewart (Borie) (A. 111).

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1. Robert B. Walls, Jr., was initially appointed guardian *ad litem* for Curtin Winsor, Jr. Steel was later appointed to succeed Walls because Curtin Winsor, Jr.'s interest conflicted with that of Dorothy B. R. Stewart and William Donner Denckla for whom Walls had also been appointed guardian *ad litem*. The stipulation providing for the substitution of Steel, approved by the Delaware Court of Chancery on September 29, 1955, also provided that all pleadings, motions, etc., therefore filed by Steel as guardian *ad litem* for Joseph Donner Winsor should also be deemed filed on behalf of Curtin Winsor, Jr.

2. The abbreviation "A. —" refers to the Delaware Record; "R. —" refers to the Florida Record in No. 107, October Term 1957; "Pet. —" refers to the Petition for Certiorari; and "PB —" refers to petitioners' brief.

When Mr. Rodgers died his widow married William H. Donner. By this second marriage Mrs. Donner had three children. Only one, Elizabeth (Hanson), is here involved. Mrs. Hanson was married three times. By her first husband she had one child, William Donner Roosevelt; by her second husband she had two children, Curtin Winsor, Jr., and Joseph Donner Winsor; and by her third husband she had one child, Donner Hanson (A. 111-112).

Parties Interested in Invalidating the 1935 Trust and Appointments.

If the 1935 *inter vivos* trust and appointments are invalid the trust property passes under the residuary clause of Mrs. Donner's will (A. 15).

Under Mrs. Donner's will the residuary legatees are two trusts. One is Trust No. 8555 (Delaware Trust Company, Trustee) under which Mrs. Denckla is the life beneficiary. The other is the Hanson trust (Mrs. Hanson, Trustee) under which Mrs. Stewart, an incompetent, is the life beneficiary, and Trust No. 8555 is the remainderman (A. 299, 15). Petitioners have remainder interests under Trust No. 8555 and therefore desire to invalidate the 1935 trust and appointments (A. 271-272).

Parties Interested in Sustaining the 1935 Trust and Appointments.

Trusts Nos. 9022 and 9023 are each appointees of $200,000.00 under the 1935 trust (A. 32-33). Joseph is a life beneficiary under Trust No. 9022 with the right to receive one-fourth of the principal at age 25 years; and Donner has a similar interest under Trust No. 9023. Curtin has a substantial remainder interest under each trust (A. 254-261, 262-269). The three infants for whom the respondent Steel is guardian *ad litem* therefore desire to sustain the 1935 trust and appointments.

At Mrs. Donner's death the corpus of the 1935 trust amounted to $1,490,000.00 (A. 104). Of this amount Mrs. Donner appointed $10,000.00 to the Bryn Mawr Hospital, $7,000.00 to six employees and $200,000.00 to each of Trusts Nos. 9022 and 9023[3] (A. 31, 93). The effect of the appointment to Trusts Nos. 9022 and 9023 was to close the disparity between the amount of the trust interests of Joseph and Donner and the larger interests of their brothers and the four grandchildren of Mrs. Donner by her first marriage under trusts created prior to the time when Joseph and Donner were born (A. 298). The balance of the corpus of the 1935 trust amounting to $1,000,000.00 was appointed to Mrs. Hanson as executrix under Mrs. Donner's will and is included in Mrs. Donner's residuary estate (A. 33). By the terms of Mrs. Donner's will the residuary estate is distributable to two trusts under which Mrs. Donokla and Mrs. Stewart, children of Mrs. Donner by her first husband, are life beneficiaries, and petitioners have remainder interests (A. 15, 270). There is no dispute concerning the right of Mrs. Donner's estate to receive this $1,000,000.00.

At issue, then, is the disposition of the $417,000.00. Delaware held that the appointees under the 1935 trust were entitled to it. Florida held that the appointments were invalid and that the appointed property should be paid over to Mrs. Hanson as executrix of Mrs. Donner's estate to be administered in Florida. Both decisions, therefore, purport to determine the ownership of the $417,000.00 and rights of possession with respect to it.

Under the Delaware decision the clearly expressed wishes of Mrs. Donner to provide for her grandchildren, Joseph and Donner, are carried out; under the Florida decision they are defeated.

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3. These were *inter vivos* trusts previously created by Mrs. Hanson, (a daughter of Mrs. Donner by her second marriage) for the benefit of Joseph, Donner, Curtin and others (A. 254-269).

SUMMARY OF ARGUMENT.

A judgment rendered by a court which lacks jurisdiction over the persons of indispensable parties in an action *in personam* or over the property of indispensable parties in an action *in rem* or *quasi in rem* is void. It is entitled to no faith or credit in a later action even as to parties over whose persons or property the court otherwise had jurisdiction.

While certain aspects of Florida's jurisdiction was challenged and upheld in Florida, Curtin was not bound by the adjudication. Curtin had a substantial remainder interest in Trusts Nos. 9022 and 9023 to which $400,000.00 had been appointed. Yet he was not a party to the Florida action, nor was he represented by persons who were. None of the trust property in which Curtin had an interest was subject to the jurisdiction of the Florida court. Basic considerations of due process prevent Curtin from being bound by the Florida judgment.

The effect of the Florida judgment was to invalidate the 1935 trust and appointments and to require the trust corpus to be transferred to Florida for administration by Mrs. Donner's executrix. To such an adjudication Wilmington Trust Company, trustee under the 1935 trust, the appointees thereunder, and Curtin were indispensable parties. None of these persons or corporations were personally subject to the jurisdiction of the Florida court and none of the trust property was located within the State of Florida. The fact that Florida was administering the estate of Mrs. Donner, the settlor of the trust who had exercised powers of appointment while residing in Florida, did not establish a *res* in Florida so as to subject Wilmington Trust Company, trustee, the appointees, or Curtin to Florida's jurisdiction. Since the court lacked jurisdiction over indispensable parties its judgment was void and entitled to no recognition as to anyone anywhere.

But assuming *arguendo* that Florida did have jurisdiction to render its judgment, still the judgment was not entitled to full faith and credit in Delaware.

In the first place, Florida held that it had no *direct* jurisdiction to invalidate the 1935 trust and appointments. It found power to do so solely because Mrs. Donner's will, which was probated in Florida, disposed of property over which it was asserted that Mrs. Donner had powers of appointment which she had not effectively exercised. Thus, Florida's jurisdiction (if any there was) to pass upon the validity of the 1935 trust and appointments was not direct, but existed only as an incident to Florida's jurisdiction to administer the estate of Mrs. Donner who was a Florida resident. This circumstance alone prevented the Florida judgment from having any binding effect in Delaware.

Then too, the Florida judgment was based upon an arbitrary and erroneous choice of law. By applying Florida law to destroy a Delaware trust which was valid under Delaware law and which had no significant relationship to Florida, Florida rendered a judgment which was lacking in due process and in derogation of the full faith and credit clause of the Constitution, which required Florida to apply Delaware law. The Florida judgment, therefore, was not entitled to full faith and credit in Delaware.

The question whether Delaware correctly held that the 1935 trusts and appointments were valid as a matter of Delaware state law presents no issue for review by this Court.

ARGUMENT.

A. The Full Faith and Credit Clause of the Constitution Did Not Require Delaware to Hold Upon the Basis of the Florida Judgment That the 1935 Trust and Appointments Were Invalid.

1. DELAWARE WAS NOT BOUND BY THE FLORIDA JUDGMENT SINCE FLORIDA LACKED JURISDICTION TO RENDER THE JUDGMENT.

(a) Curtin Winsor, Jr., Who Was Not a Party to the Florida Action or Represented by Others Who Were, Was Not Barred by the Florida Judgment From Litigating in Delaware the Question of Florida's Jurisdiction or the Substantive Validity of Its Decision When He Had a Remainder Interest Under Two Trusts to Which $400,000.00 Was Appointed.

Curtin was not named as a party in Florida. Nothing decided by Florida can have any conclusory effect upon his rights.

Petitioners dispute this and assert (1) Curtin was a "remote, contingent beneficiary" under Trusts Nos. 9022 and 9023, (2) he was represented by his mother who was guardian *ad litem* for the primary beneficiaries, and (3) he was also a member of a class represented in the Florida litigation (Pet. p. 7, fn. 5; PB. 6, fn. 5). None of these contentions is sound.

Curtin Had a Substantial Remainder Interest Under Trusts Nos. 9022 and 9023.

Joseph is the life beneficiary of Trust 9022 and Donner is the life beneficiary of Trust 9023, to each of which $200,000.00 of the 1935 trust corpus was appointed. Upon the death of the life beneficiary of each trust, and in the

absence of appointment by the life beneficiary or the survival of his issue, the corpus of each trust is distributable to the then living children of the settlor, Mrs. Hanson (A. 255-256, 263).

When Trusts Nos. 9022 and 9023 were created and at all times since, Mrs. Hanson has had four children, Joseph and Donner, the life beneficiaries, and William Donner Roosevelt and Curtin Winsor, Jr.

When the Florida litigation was begun Joseph was twelve and Donner was five. Neither had issue (A. 314); and neither had exercised their powers of appointment (A. 313).

It therefore follows that if either Joseph or Donner had died at any time after the receipt of the $400,000.00 by Trusts Nos. 9022 and 9023, the corpus of the trust would have passed to Mrs. Hanson's three surviving children of which Curtin is one.

The interest which Curtin had under both trusts was and is, therefore, a substantial remainder interest. Petitioners' characterization of Curtin's interest as "remote" and "contingent" could be applied with equal accuracy to petitioners' own interests under the residuary clause of Mrs. Donner's will. Since the interests of petitioners was sufficiently substantial to give them a standing to be heard on the validity of the 1935 trust and appointments, it is odd that petitioners should seek to deny Curtin a similar right.

Curtin's right to be heard prior to the entry of a judgment barring him of his rights under Trusts Nos. 9022 and 9023 does not depend upon the legal label which is affixed to his interest; it is enough that he has an interest and that it is substantial. Actually Curtin's interest was a vested remainder interest. Its vested character is not negatived because Curtin's right to take upon the death of the life beneficiary can be later divested by the exercise of the power of appointment by the life beneficiary or by the survival of the life beneficiary by his issue. Gray, RULE

AGAINST PERPETUITIES (4th Ed.), § 112(3), § 112.1; 3 PAIGE ON WILLS (Lifetime Ed.), § 1264, p. 706; 2 RESTATEMENT, PROPERTY, § 157(c), particularly Illustrations 3 and 12, and Comments "*o-s*", pp. 554-560.

Curtin Was Not Represented by His Mother Who Was Guardian Ad Litem for Joseph and Donner.

The Florida court appointed Mrs. Hanson guardian *ad litem* for her children, Joseph and Donner (R. 39). As life beneficiaries under Delaware Trusts Nos. 9022 and 9023 the interest of Joseph and Donner—like that of Curtin—was in upholding the validity of the appointments to Trusts Nos. 9022 and 9023. But this identity of interest in the outcome of the Florida suit did not result in Curtin being bound by the Florida judgment. A judgment against a life tenant will not bind a remainderman who is not a party to the litigation. *Nodine v. Greenfield*, 7 Paige (N. Y.) 544, 34 Am. Dec. 363 (1839); *Williamson v. Jones*, 43 W. Va. 562, 27 S. E. 411 (1897); *Stovall v. Mayhew*, 162 Ky. 283, 172 S. W. 500 (1915); *Cf.* RESTATEMENT, JUDGMENTS, § 89, Comment "*m*", p. 443.

Similarly, the jurisdiction of the Florida court over Donner who was a co-remainderman with Curtin under Trust No. 9022 and over Joseph who was a co-remainderman with Curtin under Trust No. 9023 did not have the effect of subjecting Curtin to the judgment. Curtin was not in privity with Joseph or Donner for his estate did not derive from them. Their relationship as co-remaindermen is analogous to that of co-tenants; and a co-tenant not a party to litigation will not be bound by a judgment against other co-tenants who are. *Kirby Lumber Corp. v. Southern Lumber Co.*, 145 Tex. 151, 196 S. W. 2d 387 (1946); *Chapman v. Texas Co.*, 80 F. Supp. 15 (E.D. Ill. 1948); RESTATEMENT, JUDGMENTS, § 89, Comment "*m*", p. 443; 34 *C. J.*, "Judgments," § 1435, p. 1013.

Curtin Was Not Represented in Florida as a Member of a Class.

To begin with the Florida suit was not pleaded as a class action. See former Florida Equity Rule 14, now Florida Rule of Civil Procedure 3.6 (31 *Fla. Stats. Ann.* 168). Since the Florida action was not instituted and conducted as a class action it cannot be transformed into a class action after judgment. *O'Hara, et al. v. Pittston Co.*, 186 Va. 325, 42 S. E. 2d 269, 279 (1947).

Furthermore, the action in Florida could not properly have been a class action. The only class to which Curtin arguably belonged was that of remaindermen under Trusts Nos. 9022 and 9023. Since, however, there were only three living persons with similar interests under each of the trusts, the membership of the "class" was not so numerous as to make it impractical to join Curtin as a party. The difficulty of joining as parties all members of a class because of the number of the membership is a condition to their valid omission in Florida (see former Florida Equity Rule 14) as it is elsewhere. *See Hansberry v. Lee*, 311 U. S. 32, 41 (1940).

Curtin Was Not Bound by the Florida Judgment Under the Doctrine of Virtual Representation.

The doctrine of virtual representation has application only when it is impossible or impractical to join as a party a person having a future interest in property, either because his identity is not ascertainable, or he is not *in esse*, or he is beyond the jurisdiction of the court. Curtin was not such a person. At all times pertinent Curtin was living and resided in Florida with his mother (A. 314). The doctrine of virtual representation is inapplicable to a person within the jurisdiction who is entitled to notice and has a right to be heard. *Chambers v. Preston*, 137 Tenn. 324, 193 S. W. 109, 112 (1917); 33 *Am. Jur.*, "Life Estates, Remainders, etc." § 180, p. 648.

Mrs. Hanson, Whom Petitioners Claim Represented Curtin in the Florida Action, Had Financial Interests and Legal Duties Adverse to Curtin.

Lastly, Mrs. Hanson, whom petitioners assert represented Curtin, actually had adverse interests to his. As executrix, Mrs. Hanson stood to obtain more in commissions if the 1935 trust were struck down and Mrs. Donner's estate correspondingly increased (A. 171). Under certain contingencies Mrs. Hanson was likewise a beneficiary under Trust No. 8555, one of the residuary legatees under Mrs. Donner's will (A. 272). Moreover, Mrs. Hanson, as testamentary trustee of one-half of Mrs. Donner's residuary estate, was under a legal duty to do her utmost to defeat the 1935 trust and thereby enlarge the corpus of the testamentary trust. While it is not suggested that Mrs. Hanson has not done her best as guardian *ad litem* for Joseph and Donner to protect their interests in accordance with the manifest intentions of the settlor-testatrix, the fact that both personally and as a fiduciary Mrs. Hanson's interests were adverse to Curtin's should as a matter of public policy, if not Constitutional due process necessity, prevent Curtin from being bound by anything that Mrs. Hanson did as a representative of Joseph and Donner. See *Riley, Executors v. New York Trust Co. Administrator, et al.*, 315 U. S. 343, 356 (1942) (concurring opinion).

No Florida statutory or decisional law pertinent to the question of Curtin's vicarious representation in the Florida litigation has been found. This Court is therefore warranted in accepting the above cited general authorities as an expression of what the Florida law is. *Burns Mortgage Co. v. Fried*, 292 U. S. 487, 496 (1934); *Pierce v. Ford Motor Co.*, 190 F. 2d 910, 915 (4th Cir. 1951), cert. denied 342 U. S. 887 (1951). Under the authorities generally it is clear that Curtin was neither a party nor represented by others who were parties to the Florida litigation.

Without violating elementary "due process" concepts Curtin cannot be held to be bound by the Florida judgment. So far as Curtin's rights are concerned the Florida judgment was without validity in Florida and was entitled to no credit in Delaware. *Pennoyer v. Neff*, 95 U. S. 714 (1878); *Old Wayne Mutual Life Ass'n. v. McDonough*, 204 U. S. 8, 23 (1907); *Wetmore v. Karrick*, 205 U. S. 141, 149 (1907); *Riverside Mills v. Menefee*, 237 U. S. 189, 196-197 (1915); *Griffin v. Griffin*, 327 U. S. 220, 228-229 (1946) rehearing denied, 328 U. S. 876 (1946).

(b) Florida Lacked Jurisdiction Over the Persons and Property of Indispensable Parties, viz., Wilmington Trust Company, Trustee Under the 1935 Trust, Appointees Thereunder, and Curtin.

By the exercise of Mrs. Donner's power of appointment under the 1935 trust, the following persons and corporations became entitled to the amounts set opposite their respective names (A. 9, 10, 31-33, 36):

Miriam V. Moyer	$ 2,000.00
Dorothy Doyle	1,000.00
Mary Glackens	1,000.00
Walter Hamilton	1,000.00
James Smith	1,000.00
Ruth Brenner	1,000.00
Bryn Mawr Hospital	10,000.00
Delaware Trust Company, Trustee under Trust No. 9022 for Joseph and others	200,000.00
Delaware Trust Company, Trustee under Trust No. 9023 for Donner and others	200,000.00
Total	$417,000.00

At issue in Florida was the validity of the rights of the appointees of $417,000.00.

Florida Lacked Jurisdiction Over Wilmington Trust Company, Trustee Under the 1935 Trust, the Appointees Thereunder and Curtin.

Three of the appointees, Doyle, Brenner and Glackens, were not even named parties (A. 70). Nor was Curtin notwithstanding his substantial remainder interest under Trusts Nos. 9022 and 9023 (A. 70). Hamilton, another appointee, was named as a party but no attempt was made to serve him (R. 37-39). Consequently, Florida did not even purport to acquire jurisdiction over either the persons or the property of these persons.

Although the Wilmington Trust Company, and the other appointees were named parties in Florida, all of them, with the possible exception of Hamilton, were non-residents of Florida (A. 71-73).[4] Neither Wilmington Trust Company nor Delaware Trust Company as trustee under Trusts Nos. 9022 and 9023 had an office or other place of business outside of Delaware (A. 94, 253). Because of the impossibility of making personal service in Florida upon them or the other appointees, service was purportedly made by publication and by mail under Chapter 48, Fla. St. (1953) 48.01 and 48.02, Vol. 1, p. 233 (see Appellants' brief in October Term 1957, No. 107, pp. 4-5). None of the non-residents appeared in response to the notice.

The trial court in Florida held that it had "no jurisdiction over the non-answering defendants." The court held that the service by publication and by mail was insufficient to subject their property to the jurisdiction of the court since "the trust assets * * * are in Delaware" (R. 110-111).

On cross appeal the Florida Supreme Court held that Florida had jurisdiction *over the persons* of the absent defendants (R. 191, 192). Petitioners make the same assertion (PB. 19). Florida's determination was obviously at

4. The complaint alleges that Hamilton was a Florida resident (A. 73). The answer of Mrs. Hanson denies this (R. 48).

odds with the basic Constitutional limitations upon the jurisdiction of a State court. *Pennoyer v. Neff*, 95 U. S. 714 (1878); *Armstrong v. Armstrong, et al.*, 350 U. S. 568, 576 (1955); *Vanderbilt v. Vanderbilt*, 25 U. S. LAW WEEK 4563, 4564 (June 24, 1957).

Florida had no conceivable jurisdictional basis for making an adjudication concerning these non-residents. The Florida action was not a case where the Florida court had a basis for jurisdiction over non-residents because it was adjudicating interests of non-residents in property located in Florida. See *Pennoyer v. Neff*, 95 U. S. 714, 723-724, 730-733 (1878). Cf. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950). Nor was it a case where the Florida court had a basis for jurisdiction because it was making an adjudication concerning the obligation to non-residents of an obligor personally subject to its process. See *Atkinson v. Los Angeles Superior Court*, 26 U. S. LAW WEEK 2255 (Nov. 5, 1957). Neither petitioners nor the Florida court have suggested that Florida had either of these conventional bases for acquiring jurisdiction by substituted service.

Moreover, the Florida case was not one where its courts could have acquired personal jurisdiction by substituted service because the non-residents were "doing business" in Florida, or were "present" in Florida, or were engaging "in economic activity" in Florida, *McGee v. International Life Insurance Company*, 26 U. S. LAW WEEK 4073 (Dec. 16, 1957), or had the "minimum contacts" with Florida required by due process, *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945). These non-residents had no cognizable contacts with Florida whatsoever. See pp. 30-31, *infra*. They could not be personally subject to the jurisdiction of its courts if today there is any limit to the reach of state process.

And the Florida Supreme Court itself did not regard any activities of these non-residents as establishing contacts giving it a basis for personal jurisdiction. Rather,

the Florida court premised its finding of personal jurisdiction on the single theory that "because substantive jurisdiction existed in the Florida court by virtue of construction of a will" of a Florida decedent Florida had power to adjudicate claims asserted on behalf of the decedent's estate against property and persons located outside of Florida (R. 191). It relied upon *Henderson v. Usher*, 118 Fla. 688, 160 So. 9 (1935) (R. 191-192). There the court said that when an executor comes into court seeking the construction of a will "the will is the res" (160 So. at p. 10), and that the out of state intangible assets dealt with by the will "are constructively brought * * * into the court" (160 So. at p. 11).

Apart from the aspects of *Henderson* which distinguish it from the case at bar,[5] its *rationale* is in flat conflict with the Constitutional teachings of this court. It is now settled that, although a judgment of probate may be *in rem*, this is true only with respect to assets located in the state of probate. So far as the judgment of probate affects personalty beyond the state, it is *in personam* and can only bind parties to the probate proceedings or their privies.

Thus, in *Baker v. Baker, Eccles & Company*, 242 U. S. 394 (1917), the question was whether a Tennessee judgment, adjudicating that an intestate was domiciled in Tennessee and hence the devolution of his personal intangible property located in Kentucky was governed by Tennessee law, was entitled to full faith and credit as an *in personam* judgment against a resident of Kentucky who had been served only by publication in the Tennessee action. This Court held that it was not, for the reason that the judgment "was rendered without jurisdiction over the person sought to be bound" (242 U. S. at p. 401). This Court said that the Tennessee judgment could not conclusively establish rights in the Kentucky assets as against the Kentucky resi-

5. Certain of these features are discussed by the Delaware Supreme Court (A. 239-240) and at pages 18-19 of Appellants' Brief in the companion case October Term 1957—No. 107.

dent because the latter "was not served with process and did not appear" in the Tennessee action (242 U. S. at p. 404).

Moreover, in *Riley, Executors v. New York Trust Co., Administrator,* 315 U. S. 343 (1942) the Court said at p. 353:

> "So far as the assets in Georgia are concerned, the Georgia judgment of probate is *in rem;* so far as it affects personalty beyond the state, it is *in personam* and can bind only parties thereto or their privies."

And in *Overby v. Gordon,* 177 U. S. 214, 223 (1900), the Court said with respect to the grant of letters of administration in Georgia:

> "* * * the adjudication of a grant of letters would have no binding probative force in contests respecting property lying outside of the territorial dominion of the state of Georgia. * * *"

Presence of the property or the interested persons is thus the jurisdictional prerequisite for such probate adjudications, as well as for all other property adjudications. Just because of that, ancillary administration is an American legal institution.

But even if a domiciliary court were to be given the Constitutional power to make adjudications concerning the devolution of property interests of its domiciliaries in the absence of the property and other interested persons, that would still not confer jurisdiction upon the Florida court in this instance. *Here, the Florida court did not merely adjudicate concerning the devolution of property of its domiciliary; it made the distinct determination that property located elsewhere was not the property of non-residents but was the property of its domiciliary and thus constituted a part of the domiciliary's estate.* That is a different question, one that certainly necessitates the presence in Florida of either the property or the other claimants to

the property. Otherwise, Florida could Constitutionally adjudicate claims asserted by or on behalf of its domiciliaries to all property located outside of Florida against all persons located outside of Florida on the ground that it was determining what property constituted the estates of its domiciliaries. Florida cannot thus extend its power and divest non-resident claimants and creditors to property located in other states. That would authorize national service of state process whenever the forum was the domicile of the decedent under whom the plaintiff claimed. Certainly our Constitution does not permit that.

Admittedly, Florida has an interest in the economic status of its domiciliaries, dead and alive. Consequently, it has power to tax them and certain of the property they own and income they earn. When they die, its law is applicable to determine the devolution of certain of that property. See *Domorest v. City Bank Farmers Trust Co.*, 321 U. S. 36, 48 (1944). But this interest does not give Florida power to determine the distinct question whether its domiciliary has an interest superior to others beyond its borders in property beyond its borders, with no cognizable contact with the state. Florida's interest in the foreign property, in the taxation of it and in the devolution of it, cannot arise until it is first determined that its domiciliary or his estate owns it. To determine this question, either the property or the other interested persons must be before the Florida court. Constitutionally, nothing less will do.

Petitioners point out that Mrs. Hanson as executrix filed an inventory in Florida which included the assets constituting the corpus of the 1935 trust (PB. 6, 9). Petitioners suggest—although they do not argue the point directly—that in some way the filing of this inventory subjected the Delaware assets to the jurisdiction of the Florida court. Actually, the Delaware assets were included in the inventory through inadvertence, and a corrected inventory

omitting the Delaware assets was subsequently filed (R. 74-90). The Florida trial court expressly rejected the contention that the filing of the inventory gave Florida jurisdiction over the Delaware assets (R. 110-111); and the Supreme Court of Florida apparently deemed the point unworthy of comment. In any event, it is not perceivable how the act of Mrs. Hanson, as executrix, can have any binding effect upon the rights of Wilmington Trust Company, the appointees of the trust assets, or Curtin.

Manifestly, Florida had no jurisdictional basis for entering a judgment either *in personam* or *in rem* against the non-resident defendants, or against Curtin who was not a party to the action.

The Wilmington Trust Company, Trustee, the Appointees, Including Delaware Trust Company, Trustee, and Curtin Were Indispensable Parties to the Florida Litigation.

Florida found it unnecessary to decide whether Wilmington Trust Company and the appointees were "necessary" parties. This is because of its erroneous conclusion that it had in fact acquired jurisdiction over them (R. 192).

When regard is had to the purpose of the Florida action and the scope of the Florida adjudication the indispensability of the non-residents as parties is apparent.

The complaint in Florida prayed that the Court determine (A. 82):

> "* * * what portion of the trust property involved herein passes under the residuary clause of the will of the decedent."

The Florida complaint alleged that if the appointments were invalid (A. 81):

> "* * * certain property of the trust become assets of the residuary estate of the decedent, * * *"

and that (A. 81):

> "* * * it is important to capture the same for the benefit of the estate prior to the discharge of the defendant executrix * * *."

After holding that the appointments were invalid the judgment of the Florida trial court stated (A. 84):

> "* * * the executrix should receive the assets and dispose of them agreeable to the will under which she was appointed."

and that (A. 84-85):

> "* * * the assets held under the provisions of the trust agreement dated March 25, 1935, between the decedent, Dora Browning Donner, and Wilmington Trust Company, as Trustee, and additions thereto, passed under the will of Dora Browning Donner, dated December 3, 1949, and disposition thereof is determined by the residuary clause of the will, * * *"

The judgment of the trial court was affirmed by the Supreme Court of Florida (A. 217-218).

The net of the Florida decision was an adjudication that the trust and appointments were invalid, that the Wilmington Trust Company could not properly transfer the $417,000.00 to the appointees, that Delaware Trust Company was not entitled to the $400,000.00 appointed to it under Trusts Nos. 9022 and 9023, and that Mrs. Hanson, as Mrs. Donner's executrix, was entitled to the trust assets to administer in Florida. Yet all of this was purportedly adjudged without Florida having before it either the persons or the property of the Wilmington Trust Company, the appointees, or Curtin.

Petitioners erroneously argue that the Wilmington Trust Company, trustee, and Delaware Trust Company, trustee, were merely stakeholders (PB. 19). Wilmington Trust Company was more than that. It was a fiduciary charged with a duty to defend the existence of its trust.

2 *Scott on Trusts* § 138; *O'Hara v. McConnell, et al., assignees,* 93 U. S. 150, 152 (1876); *Chinnis v. Cobb, et al.,* 210 N. C. 104, 185 S. E. 638, 642 (1936). Compare *Weymouth v. Delaware Trust Co.,* 29 Del. Ch. 1, 45 A. 2d 427 (1946) wherein it was held that a trustee has a duty to defend the existence of his trust even against an attempt by the settlor and the sole beneficiary to defeat it.

And Delaware Trust Company was under no less a duty to protect the corpus of Trusts Nos. 9022 and 9023. Joseph and Donner, the life beneficiaries who were before the Florida Court, were not the only persons interested in these two trusts. Curtin and William Donner Roosevelt each had remainder interests under the trusts (*supra,* p. 9). Delaware Trust Company was obligated by law to protect the rights of these remaindermen. *Chinnis v. Cobb, et al.,* 210 N. C. 104, 185 S. E. 638 (1936); *Wilson v. Russ,* 17 Fla. 691, 697 (1880); *Winn v. Strickland,* 34 Fla. 610, 16 So. 606, 613 (1894). So also was it duty bound to protect the potential interests which unborn children of Joseph and Donner had in the corpus of Trusts 9022 and 9023. *Harvey, et al. v. Fiduciary Trust Co., et al.,* 299 Mass. 457, 13 N. E. 2d 299, 304 (1938).

The indispensability of a trustee as a party to litigation involving the existence of the trust or affecting the trust estate is recognized everywhere. In addition to the cases cited at pp. 20-22 of the brief filed by appellants in the companion case—October term, 1957, No. 107—*Watts v. Watts,* 151 Kan. 125, 98 P. 2d 125 (1940); *O'Hara v. McConnell, et al.,* 93 U. S. 150, 154 (1876) and the decision of the Delaware Supreme Court (A. 243) in the case at bar likewise support this view. So also do decisions of the Supreme Court of Florida. *Wilson v. Russ,* 17 Fla. 691, 697 (1880); *Winn v. Strickland,* 34 Fla. 610, 16 So. 606, 613 (1894); and *Trueman Fertilizer Co. v. Allison,* — Fla. —, 81 So. 2d 734, 738 (1955). In the latter case the Florida Supreme Court sitting *en banc* said:

"There is, of course, the general rule that a trustee is an indispensable party in all proceedings affecting the estate. Winn v. Strickland, 34 Fla. 610, 16 So. 606; Wilson v. Russ, 17 Fla. 691; Griley v. Marion Mortgage Co., 132 Fla. 299, 182 So. 297. * * *"

And in *Wilson v. Russ*, 17 Fla. 691, 697 (1880) that Court said:

"A trustee in whom is vested the legal estate is a necessary party in all proceedings affecting the estate, where there is a remainderman, for the trustee is liable for the proper care and preservation of the property. (Hill on Trustees, 384, et seq.; Tiffany and Bullard, 809, 815.) * * *"

The principles established in the leading case of *Shields and others v. Robert R. Barrow*, 58 U. S. (17 How.) 130 (1854) confirm the fact that the Wilmington Trust Company and Delaware Trust Company were indispensable parties in the Florida action. There the Court refused to set aside an agreement of compromise between the payee of a note, the maker and the four endorsers when the payee as plaintiff joined only two of the endorsers as defendants. In holding that the action must be dismissed, the Court pointed out (p. 139):

"The contract of compromise was one entire subject, and from its nature could not be rescinded, so far as respected two of the parties to it, and allowed to stand as to the others."

In the course of its decision the Court laid down the classic definition of indispensable parties at p. 139:

"Persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience."

Just as the agreement of compromise was "one entire subject" in the *Shields* case, so also was the trust an indivisible whole in the case *sub judice*. The Florida judgment adjudged that the trust assets passed under Mrs. Donner's will and that her executrix was entitled to the assets for administration in Florida. The judgment did not purport to apply to some of the assets or to any particular persons interested in them. It was intended to apply to the trust assets *in their entirety*, and to *all* persons interested therein. In these circumstances the relationship of Wilmington Trust Company and Delaware Trust Company to the Florida litigation brings them within the *Shields v. Barrow* definition of indispensable parties. Florida has followed *Shields v. Barrow* and has adhered to its indispensable party requirement. *Martinez v. Balbin*, — Fla. —, 76 So. 2d 488, 490 (1954); *Florida Land Rock Phosphate Co. v. Anderson*, 50 Fla. 501, 39 So. 392, 396-397 (1905).

Even assuming that Curtin need not have been joined as a party if jurisdiction had been obtained over the Wilmington Trust Company and Delaware Trust Company, he was obviously an indispensable party in the absence of jurisdiction over the trustees.

In the Absence of Indispensable Parties, Florida Had No Jurisdiction to Render a Judgment Which Was Binding Upon Anyone in Delaware.

The absence of indispensable parties is a jurisdictional defect. This is the law in Florida as it is elsewhere. *Florida Land Rock Phosphate Co. v. Anderson*, 50 Fla. 501, 39 So. 392, 396 (1905); *Martinez v. Balbin*, — Fla. —, 76 So. 2d 488, 490 (1954); *Hartley v. Langkamp*, 243 Pa. 550, 90 Atl. 402, 404 (1914); *Fineman v. Cutler*, 273 Pa. 189, 116 A. 819, 820-821 (1922); *Hymans v. Old Dominion Co.*, 204 Fed. 681, 684 (D. Me. 1913); *Transcontinental & Western Air Inc. v. Farley, et al.*, 71 F. 2d 288, 292 (2d Cir. 1934); *Viking Press, Inc. v. Goldman*, 38 F. Supp. 1014 (S. D. N. Y. 1941); *Ernest v. Fleissner*, 38 F. Supp. 326 (E. D. Wis. 1941);

Massachusetts Farmers Defense Committee v. United States, 26 F. Supp. 941 (D. Mass. 1939); *Krueding v. Chicago Dock & Canal Co.*, 285 Ill. 79, 120 N. E. 478, 479 (1918); *Powell v. Shepard*, 381 Pa. 405, 113 A. 2d 261, 264-265 (1955); *Bank of California Nat. Ass'n. et al. v. Superior Court*, 16 Cal. 2d 516, 522, 106 P. 2d 879, 884 (1940). See *Barney v. Baltimore City*, 6 Wall. (U. S.) 280, 286-7 (1867).

In *Florida Land Rock Phosphate Co. v. Anderson*, 50 Fla. 501, 39 So. 392 (1905) the Supreme Court of Florida acting *sua sponte*, said that if "necessary" parties are absent (p. 396):

> " * * * then we cannot adjudicate and determine the controversy, * * * "

More recently, in *Martinez v. Balbin*, — Fla. —, 76 So. 2d 488 (1954) the Supreme Court of Florida termed the lack of indispensable parties a "substantive defect" and asserted that if the omitted parties were truly indispensable (76 So. 2d at 490):

> "the defect goes to the substance of appellant's case, for the action cannot proceed without them. * * *" [Citing *Shields v. Barrow*, 17 How. 129, 135 (1854) and other cases].

In *Hartley v. Langkamp, et al.*, 243 Pa. 550, 90 Atl. 402, 404 (1914) the Pennsylvania Supreme Court adopted as its own the following language from 16 Cyc. 189:

> "' * * * The rule as to indispensable parties is neither technical nor one of convenience; it goes absolutely to the jurisdiction, and without their presence the court can grant no relief. Thus where the object of a bill is to divest a title to property, the presence of those holding or claiming such title is indispensable.' "

Concerning the collateral vulnerability of a judgment rendered by a court in the absence of indispensable parties

the court in *Bank of California Nat. Ass'n, et al. v. Superior Court,* 16 Cal. 2d 516, 522, 106 P. 2d 879, 884 (1940) said:

> "An attempt to adjudicate their rights without joinder is futile. Many cases go so far as to say that the court would have no jurisdiction to proceed without them, and that its purported judgment would be void and subject to collateral attack. * * * ."

Similarly, in 48 *Harv. L. Rev.* 995 (1935) the author says at 996:

> "In order that the court may render an effective decree which will not be open to collateral attack, all persons are 'necessary' whose rights or duties will inevitably be affected by the decree. * * *"

The erroneous determination by the Florida Supreme Court that it had jurisdiction "over the persons" of Wilmington Trust Company and Delaware Trust Company enabled the Court to escape passing upon their indispensability as parties (R. 192). If Florida had properly held that jurisdiction over the Wilmington Trust Company and Delaware Trust Company was lacking and then faced the question of their indispensability as parties, Florida unquestionably would have held that they were indispensable parties and that their absence constituted a jurisdictional deficiency which required a dismissal of the action as to all parties. The Florida precedents previously cited lead indubitably to this conclusion (*supra,* pp. 23-24).

Since Florida lacked jurisdiction to render the judgment, the judgment was entitled to no faith or credit in Delaware. *Thompson v. Whitman,* 18 Wall. (U. S.) 457 (1873); *Thorman v. Frame,* 176 U. S. 350, 356 (1900); *Thompson v. Thompson,* 226 U. S. 551, 561 (1913); *Estin v. Estin,* 334 U. S. 541, 549 (1948).

2. ASSUMING *ARGUENDO* THAT FLORIDA HAD JURISDICTION TO RENDER THE JUDGMENT, DELAWARE WAS NOT BOUND BY IT.

(a) Florida's Jurisdiction (if any) to Render the Judgment was Only Incidental to the Administration of the Estate of a Florida Decedent.

A court which has jurisdiction directly to determine an issue can properly decide that issue without regard for the decision of another court which had no jurisdiction to determine the question directly but does so as an incident to resolving another question which it had jurisdiction directly to decide. Restatement, Judgments, § 71; *Scott "Collateral Estoppel by Judgment"*, 56 *Harv. L. Rev.* 1, 18 (1942). Both the Court of Chancery and the Supreme Court of Delaware relied upon the foregoing principle as one reason (among others) for holding that they were not bound by the Florida judgment (A. 179-180, 241-242).[6] Their decision in this regard was clearly right.

Florida made no claim that it had jurisdiction directly to pass upon the validity of the trust and the appointments. On the contrary, it held that it had no direct jurisdiction to do so. The court said it had "substantive jurisdiction * * * by virtue of the will, which had been duly probated in Florida." * * * The will, the court said, referred to powers of appointment and this circumstance provided the court

6. Delaware properly held upon the basis of the authorities cited by it that the question before it was not the *res judicata* effect of the Florida judgment, but whether that judgment served as a collateral estoppel in Delaware. Delaware soundly observed that the causes of action involved in the two suits were different in that in Florida the issue was what assets passed under Mrs. Donner's will, whereas in Delaware the question was the validity of the trust and appointments thereunder (A. 241). The Supreme Court of Florida itself commented upon this distinction saying that the Florida action was filed for the purpose "of determining what passes under the residuary clause of the will" (R. 183) while the Delaware action was brought "to determine the validity of the trust agreement" (R. 184).

with "no alternative but to examine the trust instrument and documents executed thereunder and declare them valid or invalid." The court added that so far as its substantive jurisdiction was concerned the case was to be distinguished from one wherein questions of administration or validity of an *inter vivos* trust arose "absent a will or any reference therein" (R. 185). This was tantamount to the Court saying that it had no direct jurisdiction to pass upon the validity of the trust and appointments, but was able to do so simply as an incident to determining what passed under Mrs. Donner's will. Petitioners themselves have thrice recognized that the jurisdiction of Florida was incidental only (Pet. 3, PB. 10, A. 246).

On the other hand, the power of Delaware to determine directly the interests of all claimants, resident or non-resident, in the trust assets located and administered within its borders, has never been challenged.[7]

Because Florida was without jurisdiction to pass directly upon the validity of the trust agreement and appointments, while Delaware had the power directly to resolve these questions, Delaware was not bound by the Florida judgment under the authorities above cited and those cited in the Delaware Vice Chancellor's opinion (*supra* p. 26, A. 181).

Since Florida's jurisdiction to pass upon the validity of the trust and appointments was at best incidental only while Delaware had direct jurisdiction to do so, the full faith and credit clause did not require Delaware to follow the Florida judgment. The purpose of the clause was simply to give the *res judicata* or collateral estoppel effect of a judgment in one state the same effect in every other state. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438 (1943); *Riley, Executors v. New York Trust Co., Administrator, et*

7. Jurisdiction was obtained by publication and the mailing of notices to the last known address of the claimants pursuant to an order of the Court of Chancery entered under § 365 of *Title 10, Del. C. 1953.*

al., 315 U.S. 343, 349 (1942); *United States v. Silliman*, 167 F. 2d 607, 621 (3d Cir. 1948); RESTATEMENT, JUDGMENTS, § 68, Comment "*v*".

(b) THE FLORIDA JUDGMENT WAS LACKING IN DUE PROCESS AND WAS IN DEROGATION OF THE FULL FAITH AND CREDIT CLAUSE IN THAT BY AN ARBITRARY APPLICATION OF FLORIDA LAW FLORIDA DESTROYED RIGHTS VALIDLY ESTABLISHED UNDER DELAWARE LAW BY A TRUST CREATED AND ADMINISTERED IN DELAWARE WHICH HAD NO SIGNIFICANT RELATIONSHIP TO FLORIDA.

Delaware has held that under its laws the 1935 trust and appointments were valid. Florida reached a contrary conclusion by applying Florida law as the criterion. The Supreme Court of Florida posed as a critical question "the source of the applicable law to test the validity of the attempted trust disposition." (R. 185). Answering this question the court held that Florida law was controlling (R. 187). This, Florida said, was because Mrs. Donner signed the 1949 and 1950 appointments when she was a Florida resident; that such executions were her last effective acts with reference to the trust; that such actions were tantamount to "a republication of the original trust instrument" and that the legal effect was the same as though Mrs. Donner had resided in Florida when the original trust agreement was executed (R. 187).

Florida thus rejected the Delaware view that the execution of a power of appointment in effect writes into the original instrument the names of the appointees as beneficiaries (A. 229, 230, 239); and that in any event the domicile of a settlor is but a minor factor in determining the situs of an *inter vivos* trust (A. 235). In short, Florida refused to adhere to the Delaware law that the domicile of the trustee and the place of trust administration indicate an intention on the part of a settlor to have an *inter vivos* trust governed by Delaware law in the absence of a con-

trary intention manifested by the settlor by circumstances other than his domicile (A. 228-229).

The determination by the Florida court that Florida and not Delaware law controlled the validity of the trust agreement and the appointments thereunder cannot be reconciled with *Hartford Accident & Indemnity Co., et al. v. Delta & Pineland Co.*, 292 U. S. 143 (1934). There, a Mississippi corporation sued a Connecticut corporation in a Mississippi state court to recover upon a fidelity bond written by the defendant. The bond contained a provision limiting the time within which a claim could be asserted and this period had expired. Nevertheless, Mississippi held that plaintiff was entitled to recover since in its view the provision of limitation in the bond was invalid under a statute of Mississippi and its public policy. This Court reversed. It held that inasmuch as the bond had been entered into in Tennessee, and the bond provision limiting the time for the bringing of an action was valid under Tennessee law, Mississippi should have applied Tennessee law to deny recovery rather than Mississippi law to permit recovery, and that the erroneous choice of law by the Mississippi court constituted a denial of due process to the defendant. *This was so, the Court said, even though both parties were doing business in Mississippi and the loss took place in Mississippi.* The Court said (pp. 149-150):

> "The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the state's alleged interest in the transaction? We think not."

The decision was rested on the premise that Mississippi had but "slight connection" with the substance of the contractual obligation as compared with Tennessee's interest in it. The Court said that a state (p. 150):

> "• • • may not, on grounds of public policy, ignore a right which had lawfully vested elsewhere, if,

as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here performance at most involved only a casual payment of money in Mississippi. In such a case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw from the state of the forum control over the contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guarantees of the Fourteenth Amendment." [Citing *Home Insurance Co. v. Dick,* 281 U. S. 397, 407-408 (1930) and *Aetna Life Insurance Co. v. Dunken,* 266 U. S. 389, 399 (1924)].

An *inter vivos* trust is a contractual arrangement between settlor and trustee. But unlike an ordinary contract, a trust is by its very nature a local and not an ambulatory entity. For this reason the *rationale* of the *Hartford Accident* case is particularly apt here. Thus, the Delaware Vice Chancellor said that Delaware was the "home" of the trust (A. 182). The Delaware Supreme Court spoke of Delaware as the trust "situs" (A. 228, 229). Florida itself has referred to the "situs" of a trust and thereby has recognized its localized character. *Henderson v. Usher,* 118 Fla. 688, 160 So. 9, 11 (1935). In this sense it is analogous to the fidelity bond involved in the *Hartford Accident* case.

In the case at bar the roots and relationships of the 1935 trust were essentially in Delaware. The trust agreement was entered into in Delaware. The trust securities were delivered to and the title was vested in the trustee in Delaware. All acts of trust administration took place in Delaware. The trust assets have at all times been located in Delaware. All of the appointments became effective upon delivery of the appointments to the trustee in

Delaware (A. 89-92). The trustee was accountable in the Delaware courts. It was amenable to the Delaware court when a question of construction arose. It was subject to removal by a Delaware court for acts of malfeasance. Delaware courts alone could supervise its administration. RESTATEMENT, CONFLICT OF LAWS § 299. The paramount interest of Delaware in the trust is manifest. Cf. *Mullane v. Central Hanover Bank & Trust Company*, 339 U. S. 306, 313 (1950), where the Court emphasized the fact that each state has an interest, "insistent and rooted in custom," in trusts that "exist by the grace of its laws and are administered under the supervision of its courts."

By every significant standard the trust agreement and the trust administration were intimately tied to Delaware. The fact that Mrs. Hanson as executrix resided in Florida and was the residuary appointee of the trust assets gave Florida at most only a casual and fortuitous connection with it.

The reasoning of the Florida court, if accepted, will have unfortunate consequences. The uniformity of decision which normally results from the permanent application of the law of the situs of a trust will be supplanted by a rule making the validity and construction of every trust vary from time to time depending upon the law of the state in which the settlor resides when the questions arise. Rights fixed by the law of the trust situs will thus be arbitrarily jeopardized by the selection of a residence by a settlor.

Both the Court of Chancery and the Supreme Court of Delaware held that Delaware must be looked to to determine the validity of the trust (A. 182, 244). Florida rejected this approach and by applying Florida law held the trust to be invalid. This choice of law by the Florida court was arbitrary. Its effect was to strike down rights in a Delaware trust validly established under Delaware law having at best only a remote connection with Florida. For this reason the judgment of the Florida court was lacking in due process.

Furthermore, the full faith and credit clause of the Constitution, of necessity, requires the court confronted with the Constitutional requirement to choose the law which it will apply. When the propriety of a judicial choice of law is called into question this Court, it is believed, must be the final arbiter of the question. By its selection of Florida law and its rejection of Delaware law, the Florida court failed to give full faith and credit to the applicable Delaware law which the Constitution required. Jackson, "Full Faith and Credit—The Lawyer's Clause of the Constitution," 45 COL. L. REV. 1, 26-34 (1945). See *Pink v. A. A. A. Highway Express, Inc.*, 314 U. S. 201, 210 (1941); *John Hancock Mutual Life Insurance Co. v. Yates*, 299 U. S. 178, 182 (1936).

Because the Florida judgment was lacking in due process and failed to give full faith and credit to the Delaware law, the Florida judgment was not entitled to full faith and credit in Delaware.

B. The Validity Under Delaware Law of the 1935 Trust and Appointments Is Not Subject to Review by This Court.

Petitioners invoke the appellate jurisdiction of this Court under 28 U. S. C., § 1257(3), (PB. 2), and assert that their petition involves the "meaning and effect" of the full faith and credit clause of the Constitution (PB. 3). But such exhortations will not subject to review by this Court questions of State law. The unequivocal holding by the Delaware Supreme Court that both the 1935 trust agreement and the appointments thereunder were valid under Delaware law (A. 234) (128 A. 2d 819 at 829) was wholly within its power. *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673, 680 (1930); *Estin v. Estin*, 334 U. S. 541, 544 (1948); *Yazoo & M. V. R. R. Co. v. Mullins*, 249 U. S. 531, 533 (1919).

Petitioners suggest, however, without citation of authority, that this Court may review that determination

(PB. 23). But, as no federal question was raised by that holding, *Smith v. Adsit*, 23 Wall. (U. S.) 368, 374 (1874),[8] *Estin v. Estin*, 334 U. S. 541, 544 (1948), *Black v. Cutter Laboratories*, 351 U. S. 292, 299 (1956), petitioners' contention is without merit. It has long been the rule of this Court that it has "no concern" with the disposition made by a State court of questions of local law, *Everett v. Everett*, 215 U. S. 203, 214 (1909), *Kryger v. Wilson*, 242 U. S. 171, 176 (1916), and that power to review decisions of State courts is limited to their decisions on federal questions, *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673, 680, 681 (1930); *Skaneateles Water Co. v. Skaneateles*, 184 U. S. 354, 358 (1902); cf. *Quong Ham Wah Co. v. Industrial Comm.*, 255 U. S. 445, 448 (1921). There being no federal question involved, this Court will not review the determination by the Delaware Supreme Court that under Delaware law the trust agreement and appointments thereunder are valid.

CONCLUSION.

For the foregoing reasons the Delaware judgment, it is believed, should be affirmed.

Respectfully submitted,

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8. Justice Strong stated, "What amounts to a trust, or out of what facts a trust may spring, are not Federal questions * * * ." 23 Wall. (U. S.) 368, 374 (1874).